

REMARKS/ARGUMENTS

The claims are 1, 3, 5, 6, 8, 10, 12 and 13. Claims 1 and 8 have been amended, inter alia, to recite "at least two spaced apart members" and "an inclined" portion referring to the rearward and intermediate portions. In addition, more functional language has been incorporated to define how the base of the merchandise unit "rides on" the members and how a travel path is defined in the channel that is unobstructed between the rearward and forward portions. In addition, claims 2, 4, 7, 9, 11 and 14 have been canceled, and claims 3, 5, 10 and 12 have been amended to improve their form or to remove redundancies. Reconsideration of the claims is expressly requested.

The specification has been amended to update the status of the patent applications recited in the Cross-Reference to Related Applications. No new matter has been entered by this amendment.

Applicant wishes to thank the Examiner for the courtesy of an interview on November 4, 2004, the substance of which is recorded in the Examiner's Interview Summary Record and herein.

Claim 8 was objected to because of an informality and claims 1, 3, 4, 8, 10 and 11 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons set forth on pages 2-3 of the Office Action. In response, Applicant has amended claims 1, 3, 8 and 10 to improve their form and has canceled claims 4 and 11. It is respectfully submitted that the currently pending claims fully comply with 35 U.S.C. § 112, second paragraph.

Claims 1-3 and 7 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Sosso U.S. Patent No. 6,044,989*. The remaining claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Sosso '989* alone (claims 5 & 6) or further in view of *Stein et al. U.S. Patent No. 4,662,523* (claim 4) or *Beeler et al. U.S. Patent No. 5,353,939* (claims 8-14). Essentially, the Examiner's position was that the *Sosso '989* patent discloses the shelf and display device recited in the claims (1) except for requiring the underside of the support to have a retainer, which is said to be shown by *Stein et al*, (2) except for the specific angles recited in claim 5 and 6, which are considered a matter of obvious design choice to one skilled in the art, and (3) except for a housing having at least one open face, which is said to be disclosed by *Beeler et al*.

At the interview, the Examiner indicated that if claim 1 was amended to include "at least two spaced-apart members" in section (b) and "an inclined" portion referring to the rearward and intermediate portions, the Sosso reference would be overcome. The Examiner also suggested incorporating more functional language into the claims to define how the base of the merchandise unit "rests on", "slides on", etc., the members and how a travel path is defined in a channel that is unobstructed between the rearward and forward portions.

In response, Applicant has amended independent claims 1 and 8 to recite a gravity-feed shelf including at least one support comprising at least two-spaced apart members for the base of the merchandise unit to ride on along a travel path in the channel. The support has an inclined rearward portion elevated at a first angle between 10° and 25° and an inclined intermediate portion. The travel path is defined along the at least two spaced-apart members in the channel from the inclined rearward portion to the forward portion and is unobstructed between the rearward and forward portions so that the merchandise unit when placed on the rearward portion or the intermediate portion will descend by gravity to the forward portion of the support for access to the unit in a selected presentation position, as shown, for example,

in FIGS. 5A-5D. It is respectfully submitted that the claims, as amended, sufficiently define over the prior art for the following reasons.

As set forth in claims 1 and 8, as amended, Applicant's invention provides a gravity-feed shelf and a display device including at least one gravity-feed shelf for at least one modular merchandise unit having a substantially flat base such as is used to package batteries. Such modular units when loaded on display devices which use a straight gravity fed course have several disadvantages. If as is typical, a moderate incline is used, there is often insufficient pressure acting on the last unit loaded in display so that one or more of the units fail to advance to the correct presentation position at the dispensing location of the display. However, if the angle were made steeper, the modular units would get stuck in the display device.

In addition, particularly for batteries, the product often comes from the manufacturer in packet boxes and are put in display devices that have hooks to hang the products. These display devices require personnel to remove the product from the packet boxes and hang the product on the hooks. Moreover, once in the display device, when a purchaser removes the product, the display gives an undesirable appearance of being unstocked which

requires personnel to either restock the display or move the remaining product to the front of the display.

Applicant's shelves solves these problems by providing a gravity-feed shelf with at least one support comprising at least two spaced-apart members for the base of the merchandise unit to ride on along a travel path in the channel. The support has an inclined rearward portion elevated at a first angle between 10° and 25°, a substantially horizontal forward portion, and an inclined intermediate portion connecting the rearward and forward portions elevated at a second angle greater than the first angle. The travel path is defined along the at least two spaced-apart members in the channel from the inclined rearward portion to the forward portion and is unobstructed between the rearward and forward portions so that the merchandise unit when placed on the rearward portion or the intermediate portion of the support will descend by gravity to the forward portion of the support for access to the unit in a selected presentation position.

This arrangement has several advantages. For one, it allows the batteries to be displayed in the modular merchandise unit or packet boxes, which they are typically shipped in, without requiring store personnel to remove the batteries from the packet

boxes and place the product on hooks in the display devices as typically used to display batteries. In addition, it enables the display device to have a full appearance with the modular merchandise unit being displayed in the correct forward position without being stuck along the path of travel due to the combination of the gravity-feed angle at the inclined rearward portion and the steeper acceleration angle at the intermediate portion of the support.

None of the cited references have the structure recited in claims 1 and 8 or provide a gravity-feed shelf that can accommodate modular merchandise units such as packet boxes so that the units descend by gravity from the loading end of the shelf and be presented at the correct display angle at the dispensing end of the shelf without getting stuck in between.

The primary reference to Sosso is directed to a rack for displaying produce or meat and is designed to organize grocery goods using the lateral or "horizontal" dividers that act as shelves. These horizontal dividers are used to vertically separate the produce from one another at different elevations for ease of selection and product rotation. Sosso is entirely

unconcerned with a gravity-feed shelf or display of a modular merchandise unit having a substantially flat base.

The defects and deficiencies of the primary reference to *Sosso* are nowhere remedied by any of the secondary references to *Stein et al.* or *Beeler et al.* Like *Sosso*, *Stein et al.* is entirely unconcerned with a gravity-feed shelf or a display of modular merchandise units. Instead, *Stein et al.* is directed to a refrigeration display rack for displaying produce having a ridge 36 extending substantially vertically upward from the horizontal fourth panel section 30D. The purpose of *Stein et al.* is to support produce of different sizes and shapes in a variety of display configurations. There is no disclosure or suggestion of Applicant's gravity fed shelf having at least two spaced-apart members for a modular merchandise unit to ride on along an unobstructed travel path from a rearward to a forward portion of the display device.

Beeler et al. is directed to a variable pusher point of purchase display. However, there is no disclosure or suggestion of a display shelf having two different inclined portions

including a gravity-feed angle and an acceleration angle so that a modular merchandise unit when placed on the rearward portion of the support will descend by gravity to the forward portion of the support for access to the unit in a selected presentation position.

Accordingly, it is respectfully submitted that claims 1 and 8 are patentable over the cited references together with claims 3, 5, 6 and claims 10, 12 and 13 which depend on claims 1 and 8, respectively.

In summary, claims 1, 3, 5, 8, 10 and 12 have been amended, claims 2, 4, 7, 9, 11 and 14 have been canceled, and the specification has been amended. In view of the foregoing, it is respectfully requested that the claims be allowed and that the application be passed to issue.

A Second Supplemental Information Disclosure Statement is also attached.

Respectfully submitted,
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Enclosure: Second Supplemental Information Disclosure Statement
Copy of Petition for 2-month Extension of Time

CERTIFICATE OF FACSIMILE TRANSMISSION

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I hereby certify that this correspondence is being sent by facsimile-transmission to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 17, 2004.

Frederick J. Dorchak

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NOV 17 2004

APPLICANTS: TIMOTHY L. MASON - 13

SERIAL NO.: 10/718,405

EXAMINER: J. NOVOSAD

FILED: NOVEMBER 20, 2003

ART UNIT: 3634

FOR: SHELF AND DISPLAY DEVICE

PETITION UNDER RULE 136(a) AND RULE 17(a)(2)

MAIL STOP AMENDMENT

Hon. Commissioner for Patents

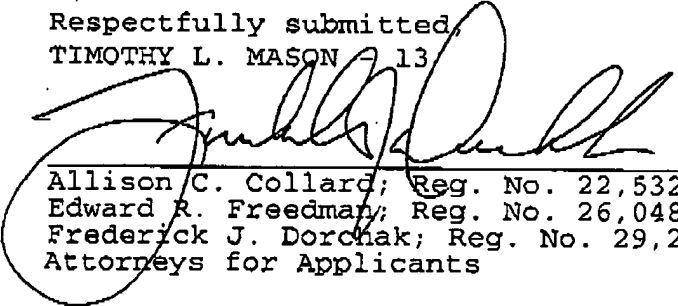
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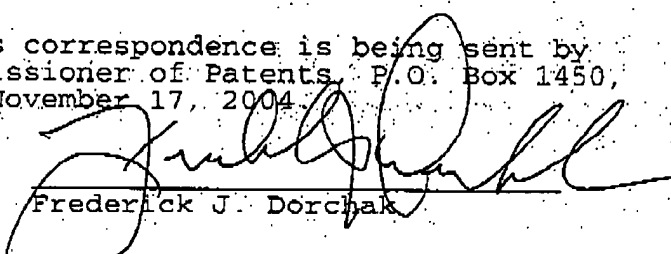
Dear Sir:

Applicants petition the Commissioner of Patents and Trademarks, under Rule 136(a), to extend the time for response to the Office Action dated July 1, 2004, for two months, from October 1, 2004 to DECEMBER 1, 2004. The Commissioner is hereby authorized to charge Deposit Account No. 03-2468 in the amount of \$430.00 to cover the cost of the extension for a Large Entity. The Commissioner is also hereby authorized to charge any additionally required fee, or to credit any overpayment, to our Deposit Account No. 03-2468.

Respectfully submitted,
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Attorneys for ApplicantsCERTIFICATE OF FACSIMILE TRANSMISSION

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